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PENN FOUNDRY AND MANUFACTURING COMPANY *v.*
PROBST.

Nov. 21, 1912.

[7 Va. App. 138.]

1. Pleading and Practice—Declaration.—Defects, alleged in a declaration as a ground for recovery of damages, are sufficiently set forth when they described with sufficient certainty and particularity to inform the defendant of the alleged cause of action which it is called upon to answer.

2. Idem—Assumption of Risk.—Assumption of risk, like contributory negligence, is a matter of defense which a plaintiff is not called on to negative either by his pleadings or evidence.

3. Idem—Knowledge of Defects.—Where a declaration avers facts from which knowledge of the facts complained of must be inferred, it is not necessary to aver knowledge on the part of the defendant. There is an obvious distinction to be observed between the knowledge required of the master with respect to machinery and appliances which are defective at the time the servant is first required to use them, and such as become unsafe during the progress of the work. It is the positive, unassignable duty of the master, in the first instance, to exercise ordinary care to furnish the servant with reasonably safe instrumentalities with which to do his work; and when the allegation of that duty is followed by an averment of the negligent breach thereof, knowledge is necessarily imputable to the master.

Error to Circuit Court of Augusta county. Affirmed.

D. Lawrence Groner, for the plaintiff in error.

Timberlake & Nelson, Curry & Curry, for the defendant in error.

TAYLOR et als. *v.* JOHNSON et als.

Nov. 21, 1912.

[7 Va. App. 143.]

1. Deeds—Estate for Life—Power of Alienation.—An estate devised or granted for life, coupled with the absolute power of alienation, either expressed or implied, comprehends everything, and the devisee or grantee takes the fee simple and absolute title to the property.

Appeal from Circuit Court of Augusta county. Affirmed.

Joseph A. Glasgow, A. C. Gordon, for the appellant.

J. M. Perry, for the appellees.